



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2020**

ON THE FOLLOWING MEASURE:

S.B. NO. 2649, S.D. 1, RELATING TO TOUR AIRCRAFT.

BEFORE THE:

HOUSE COMMITTEE ON TRANSPORTATION

LATE

DATE: Friday, March 13, 2020

TIME: 10:15 a.m.

LOCATION: State Capitol, Room 423

TESTIFIER(S): Clare E. Connors, Attorney General, or
Michael Q.Y. Lau, Deputy Attorney General

Chair Aquino and Members of the Committee:

The Department of the Attorney General provides the following comments on this measure.

The purposes of this bill are to: (1) prohibit tour aircraft operators from allowing the noise footprint of their tour aircraft from entering occupied property; (2) require tour aircraft to be fitted with a floatation device approved by the Federal Aviation Administration (FAA); and (3) require tour aircraft to be fitted with an FAA-approved automatic dependent surveillance-broadcast device (ADS-B).

The power to regulate an aircraft's flight paths, hours, and altitudes resides exclusively with the FAA. *Skysign International Inc. v. City and County of Honolulu*, 276 F.3d 1109, 1117 (9th Cir. 2002).

Section 1 on page 3, lines 1-3, prohibits tour aircraft permit holders from allowing the noise footprint of their tour aircraft from entering any occupied property. This in effect is a regulation of the aircraft's flight path and altitude, which are areas preempted by the FAA.

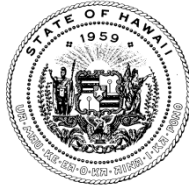
Furthermore, the bill may be subject to an air safety preemption challenge. The FAA was established to create a uniform and exclusive system of federal regulation in the field of air safety. *Air Trans. Ass'n of Am., Inc. v. Cuomo*, 520 F.3d 218, 224 (2d Cir. 2008). The FAA was created by Congress for the purpose of centralizing in a single authority the power to frame rules for the safe and efficient use of the nation's airspace.

Id. Congress intended to occupy the entire field of air safety and field preemption applies to the area of air safety. *Goodspeed Airport LLC v. E. Haddam Inland Wetlands & Watercourses Comm'n*, 634 F.3d 206, 210 (2d Cir. 2011). Once Congress's intent is established, the court must look to the scope of the preemption to determine whether the state regulation sufficiently interferes with a federal regulation such that it should be deemed preempted. *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*. 505 U.S. 88, 107 (1992).

Section 1 on page 3, lines 4-7, requires tour aircraft permit applicants to have their aircraft outfitted with a FAA approved floatation device and an ADS-B device before a permit is issued. These equipment requirements would be subject to a preemption challenge if they exceed the FAA requirements.

Thank you for the opportunity to comment on this bill.

DAVID Y. IGE
GOVERNOR



TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

Deputy Directors
LYNN A.S. ARAKI-REGAN
DEREK J. CHOW
ROSS M. HIGASHI
EDWIN H. SNIFFEN

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

March 13, 2020
10:15 a.m.
State Capitol, Room 423



S.B. 2649, S.D. 1
RELATING TO TOUR AIRCRAFT.

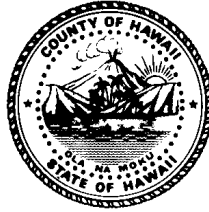
House Committee on Transportation

The Department of Transportation (DOT) **supports** the intent this bill which is aimed to improve tour aircraft safety by requiring that tour aircraft permit seekers have aircraft that are outfitted with Federal Aviation Approved safety devices.

While the safety intentions of this bill are worthy, DOT Airports Division finds the term "noise footprint" ambiguous. Also, flotation devices and automatic dependent surveillance-broadcast devices are regulated by the Federal Aviation Administration making this bill very difficult and unenforceable.

Thank you for the opportunity to provide testimony.

Harry Kim
Mayor



Roy Takemoto
Managing Director

Barbara J. Kossow
Deputy Managing Director

County of Hawai'i Office of the Mayor

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March 11, 2020

Representative Henry J.C. Aquino, Chair
Representative Troy N. Hashimoto, Vice Chair
Committee on Transportation

Dear Chair Aquino, Vice Chair Hashimoto, and Committee Members:

RE: SB 2649, SD1 Relating to Tour Aircraft

Helicopters are a valued component of our tourism industry. They also have been a source of endless complaints from communities that lie in their flight paths, and there should be no doubt that noise can constitute both a nuisance and a health hazard, especially in otherwise tranquil rural areas.

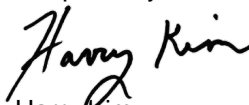
I have met with tour operators and asked them to develop a plan to address noise and safety. They took some initial steps, and I commended them for that. Moreover, I am hopeful that tour operators and community members can work together. However, the history laid out in SCR 183 (2018) is eye-opening:

“In 2000, the National Environmental Policy Act, in conjunction with the National Parks Air Tour Management Act of 2000, required an Air Tour Management Plan to be implemented at various national parks throughout the country... The objective of an Air Tour Management Plan is "to develop acceptable and effective measures to mitigate or prevent the significant adverse impacts, if any, of commercial air tour operations upon the natural and cultural resources, visitor experiences and tribal lands...In 2005, the project was upgraded to an Environmental Impact Statement, and the Federal Aviation Administration published a notice of opportunity for commercial air tour operators granted interim operating authority to review and self-correct annual authorizations. In 2008, Federal Aviation Administration and National Park Service staff met with Hawai'i air tour operators, and acoustic monitoring of three sites at Hawai'i Volcanoes National Park was conducted. In 2011, a preliminary draft Air Tour Management Plan for Hawai'i Volcanoes National Park was published, but...seven years later, in 2018, there [was] still no final Air Tour Management Plan for Hawai'i Volcanoes National Park...In addition, after more than sixteen years, no Air Tour Management Plan for any national park in the nation has been completed...”

This history only reflects government failure to appropriately regulate noise over national parks, but it is not surprising that government has been equally deficient when it comes to noise over residential areas. How can our constituents be asked to tolerate the status quo?

SB 2649, SD1, would deny a permit to anyone “allowing the noise footprint of their tour aircraft to enter any occupied property.” Given the noise complaints that helicopters generate, such legislation would be welcome news, but only if it makes a meaningful difference. Therefore, if this route is taken, I would ask this Committee to be as stringent as it deems reasonable in defining “noise footprint.” The helicopter industry should be required to become a responsible and considerate corporate member of our community, and it is not there yet.

Respectfully Submitted,


Harry Kim
MAYOR



AMOND HEAD/KAPAHULU/ST. LOUIS HEIGHTS NEIGHBORHOOD BOARD NO. 5

c/o NEIGHBORHOOD COMMISSION OFFICE • HONOLULU HALE, ROOM 406 530 SOUTH KING STREET
HONOLULU, HAWAII 96813 TEL: (808) 768-3710 • FAX: (808) 768-3711 • INTERNET: www1.honolulu.gov/nco

RESOLUTION

LATE

Supporting State Legislative Action to Require FAA Regulations Compliance to be Attached to State Airports Permits for Tour Helicopters and Small Aircraft

WHEREAS, the Hawaii State Legislature continues deliberation on several Senate and House Bills to protect the safety and welfare of Hawaii's communities, parks, neighborhoods and residents on the ground from tour helicopter safety and noise impacts; and

WHEREAS, the following commercial helicopter crashes and emergencies have occurred in Hawaii since September 2018:

- September 18, 2018- Novictor Robinson-44 crash in Wahiawa, O'ahu;
- October 22, 2018- Novictor Robinson-44 crash at Kaneohe Bay recreational sand bar;
- February 21, 2019- K&S "Paradise" Hughes-369E crash in Waipio Valley, Hawaii Island;
- April 16, 2019- K&S "Paradise" Hughes-369E in Sacred Falls State Park, Oah'u;
- April 29, 2019- Novictor Robinson-44 crash with 3 fatalities on a Kailua town street;
- May 21, 2019- Schuman "Magnum" Hughes-369D emergency landing in Diamond Head National Natural Landmark and State Historic Monument crater park with 3,300 daily visitors;
- December 26, 2019 - Safari Eurocopter-AS350 crash with 7 fatalities on a Kauai cliff face near the Na Pali Coast;
- March 5, 2020 – Blue Hawaiian Eurocopter 130 crash in Puna, Hawaii Island;

and additionally in 2016, a fatal tour helicopter crash occurred near the USS Arizona memorial and Pearl Harbor nuclear submarine base; and

WHEREAS, Federal Aviation Regulations (FAR) address necessary aircraft equipment, instrumentation and flight procedures to be implemented by tour helicopter and small aircraft operators within the State of Hawaii; and

WHEREAS, Federal Aviation Administration (FAA) Regulations are within the greater public interest by providing for the greater public safety of those in the air as well as the larger public on the ground, yet several aircraft equipment, instrumentation and flight procedures that must be implemented by all tour helicopter and small aircraft operators within the State of Hawaii remain ignored and unenforced; and

WHEREAS, FAR 14 CFR Part 136, Part 136, Appendix A, entitled "Special Operating Rules for Air Tour Operators in the State of Hawaii," requires that tour helicopters maintain a minimum altitude and minimum distance of 1,500 feet away from any land mass, structure or person, and requires safety flotation devices for all tour aircraft, which fly over water; and

WHEREAS, Part FAR 14 CFR Part 61, §61.65, provides aircraft instrument rating and flight certification requirements for inclement weather conditions that cannot be avoided, as demonstrated by the following recent fatal tour and charter helicopter crashes:

- April 29, 2019 – a Novictor Helicopters tour helicopter crashed in downtown Kailua on O'ahu, with three (3) fatalities;
- December 26, 2019 – a Safari Helicopters tour helicopter crashed into a Kaua'i cliff face, with seven (7) fatalities including three (3) children;
- January 26, 2020 – an Island Express charter helicopter crashed in Southern California, with nine (9) fatalities including three (3) children.



WHEREAS, FAA Air Traffic Control does not extend to the uncontrolled airspace below Class B radar-controlled airspace within which tour helicopter operators fly wherever, whenever and however they choose; and

WHEREAS, the State Department of Transportation Airports Division issues State permits to operators of tour helicopters and small aircraft for the use of State Airports facilities and land; and

WHEREAS, State Department of Transportation Airports Division receives general flight information from tour helicopter and small aircraft operators describing their aircraft and intended general flight paths; and

WHEREAS, State Department of Transportation Airports Division has conducted collaborative and productive roundtable meetings between government agency, community and industry representatives to determine and establish solutions for tour helicopter and other aircraft safety and noise impacts in the past; now therefore

BE IT RESOLVED that the Diamond Head/Kapahulu/St. Louis Heights Neighborhood Board strongly supports the State Legislature's adoption of any and all State Senate and House bills providing for compliance with FAA safety equipment, instrumentation and flight procedure regulations to be included as conditions for receiving State Airports Division permits for use of State Airports facilities and land; and

BE IT FURTHER RESOLVED that the Diamond Head/Kapahulu/St. Louis Heights Neighborhood Board strongly supports the State Department of Transportation Airports Division requiring detailed monthly reports from tour aircraft operators describing each of their aircraft, inclusive of N-number identification, together with each flight path and its altitudes, to be posted on a public website; and

BE IT FURTHER RESOLVED that the Diamond Head /Kapahulu/St. Louis Heights Neighborhood Board strongly supports the State Department of Transportation Airports Division convening county tour aircraft advisory committees for each county on a regular basis to include community, State Airports Division and FAA representatives to collaboratively advise on tour aircraft issues and solutions in the greater public interest; and

BE IT FURTHER RESOLVED that this Resolution, Supporting State Legislative Action to Require FAA Regulations Compliance to be Attached to State Airports Permits for Tour Helicopters and Small Aircraft, shall serve as communication to the Hawaii State Legislature and its respective Committees engaged in adopting State Legislation to protect the larger public on the ground from the continuing tour helicopter safety and noise impacts; and

BE IT FINALLY RESOLVED that this Resolution shall be delivered to all members of the State House and Senate, the Director of the State Department of Transportation and the Deputy Director of the State Department of Transportation Airports Division; the Mayor of the City and County of Honolulu and all City Council members, and all O'ahu Neighborhood Boards and interested and affected community groups on O'ahu as well as the Neighbor Islands.

Adopted by the Diamond Head/Kapahulu/St. Louis Heights Neighborhood Board on March 12, 2020

SB-2649-SD-1

Submitted on: 3/12/2020 12:08:58 PM

Testimony for TRN on 3/13/2020 10:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
bob ernst	HICoP	Support	No

Comments:

HOUSE OF REPRESENTATIVES

THE THIRTIETH LEGISLATURE

REGULAR SESSION OF 2020

COMMITTEE ON TRANSPORTATION

Rep. Henry J.C. Aquino, Chair

Rep. Troy N. Hashimoto, Vice Chair

Rep. Tom Brower Rep. Scot Z.
 Matayoshi
Rep. Ty J.K. Cullen Rep. Justin H.
 Woodson
Rep. Mark J. Rep. Val Okimoto
Hashem

NOTICE OF HEARING

DATE: Friday, March 13, 2020

TIME: 10:15am

Conference Room 423

PLACE: State Capitol

415 South Beretania Street

HOUSE OF REPRESENTATIVES

THE THIRTIETH LEGISLATURE

REGULAR SESSION OF 2020

COMMITTEE ON TRANSPORTATION

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Rep. Mark J. Hashem	Rep. Val Okimoto

NOTICE OF HEARING

DATE: Friday, March 13, 2020

TIME: 10:15am
Conference Room 423

PLACE: State Capitol

415 South Beretania Street

[SB 2649, SD1](#)

[\(SSCR2917\)](#)

[Status](#)

RELATING TO TOUR AIRCRAFT.

Amends section 261-12 to require tour aircraft operations permit applicants to have aircraft that are outfitted with FAA approved safety devices. Prohibits tour aircraft permit holders from allowing the noise footprint of their aircraft to

enter any occupied property. Requires denial of permit or rescission of permit if requirements are not met. (SD1)

SB 2649 SD1. HICOP TESTIMONY IN STRONG SUPPORT

Aloha Chair Aquino, Vice Chair Hashimoto and Committee Members Brower, Cullen, Hashem, Maytayoshi, Woodson and Okimoto,

Hawaii Island's Hawaii Volcanoes Park is the most tour copter impacted National Park/County in the Nation, Maui's Haleakala National Park is the 4th most tour copter impacted Park in the Nation and the State of Hawaii is the most tour copter impacted State in the Nation, by far. (See FAA/NPS Annual Reports.)

The State of Hawaii HDOT/Airports Division requires all tour aircraft to have a Hawaii Tour Aircraft Permit to operate aircraft tours in the State of Hawaii and this Permit has requirements that must be met to obtain the annually required Permit,

SB 2649 SD1, which was unanimously passed by the Senate, adds three common sense safety requirements to that permit.

The NTSB requested the FAA require flotation on tour copters operating in the water State of Hawaii as a result of tour copter crashes in water resulting in fatalities/drownings since the copters without flotation sunk. The most recent fatality/drowning was the recent tour copter crash in Pearl Harbor near the Arizona, where a 16 year old boy totally unnecessarily drowned because the tour copter did not have flotation and there fore sank, and even though bystanders dove in to try to release the young boy, he was under water long enough in the sunk tour copter that he became another tour copter fatality. Flotation should be a Hawaii Tour Aircraft Permit prerequisite.

The FAA required ADS-B on all aircraft, including tour copters, operating on Oahu and Maui but not on Kauai or Hawaii Island. If the recent 7 fatality Kauai tour copter crash had had ADS-B, the copter owner would have known the time and location of the copter crash location, saving time, dollars and effort of first responders to find the crash site. ADS-B should be a Hawaii Tour Aircraft Permit prerequisite so all Islands would have the safety advantages of ADS-B, not just Oahu and Maui.

The recent fatal/nonfatal tour copter crashes and the many fatal/nonfatal tour copter crashes of the past in Hawaii, such as the recent Kailua fatal crash and the fatal Kauai and Hawaii Island Leilani crashes, further corroborate that tour copters should not be operating over occupied properties since it is not safe for those on the ground. Requiring that the noise footprint not enter occupied properties should be a prerequisite of the Hawaii Tour Aircraft Permit, to provide safety for those on the ground.

In past Bills regarding tour copters, the Attorney General (AG) has commented that the State of Hawaii is prohibited from enacting common sense safety guidelines since it is the responsibility of the FAA only. HICoP asked the AG to represent the people on the ground in Hawaii and to not just say "no can". The AG should not be representing the FAA and the tour copter operators. The AG knows the tour copter debacle has been going on in Hawaii for 60 years and yet the AG has done nothing to provide relief for the people of Hawaii, only "no can".

The FAA has totally abdicated all duties and responsibilities regarding tour copters in Hawaii, and just recently two FAA Honolulu FAA Flight Standards District Office staff whistleblower identified collusion/corruption at that FAA office regarding tour copters.

The safety of passengers of tour copters and those on the ground in Hawaii, are too important for the State of Hawaii to ignore and that is why SB 2649 SD1 should be passed and become part of the existing Hawaii Tour Aircraft Permit prerequisites.

Mahalo,

The HICoP Board



Magnum Helicopters
130 Iolana Place, Honolulu, HI 96819
808-833-4354 Fax 808-837-7867
Email doug@magnumhelicopters.com

March 12th, 2020

To: State of Hawaii Committee on Transportation
Conference Room 423, State Capitol, 415 South Beretania Street
Hearing Date: March 13th, 2020

RE: SB 2649 SD1

Dear Committee Members,

Magnum Helicopters opposes bill 2649 SD1. The requirements that tour aircraft be fitted with a flotation device and an automatic dependent surveillance-broadcast device approved by the Federal Aviation Administration in order to be approved for an Air Tour Permit in the State of Hawaii.

The Federal Aviation Administration through the Federal Aviation Regulations has preemptive authority in the regulation of aircraft equipment required in all aircraft flown in the National Airspace System (NAS) of the United States of America. This authority has been established to maintain a uniform national aviation system that permits the safe and efficient utilization of the NAS. The federal preemptive authority prohibits states, cities, counties, and other entities from imposing rules related to aircraft equipment and the operation of aircraft in the nation's airspace.

Additionally this rule would do nothing to increase safety. It imposes undue financial burden on tour operators that not only abide by federal regulations, but also choose to fly routes that keep passengers over land or within glide distance of land. In these cases, the addition of flotation devices adds no protection to the passengers.

Finally, the recently added verbiage stating: "All tour aircraft permit holders shall be prohibited from allowing the noise footprint of their aircraft to enter any occupied property" is incredibly vague, has no definition, or scientific basis, and would only add confusion and hardship on not only the operators as they struggle on how to comply with this requirement, but on the state, as well, trying to enforce it.

We respectfully ask the committee to reject this bill.

Thank you,

A handwritten signature in black ink that reads "Douglas Froning". The signature is written in a cursive, flowing style.

Douglas Froning,
General Manager/Chief Pilot

12 March 2020

To: Committee on Transportation
Representative Henry J.C. Aquino, Chair
Representative Troy N. Hashimoto, Vice Chair
Representative Tom Brower
Representative Ty J.K. Cullen
Representative Mark J. Hashem
Representative Scot Z. Matayoshi
Representative Justin H. Woodson
Representative Val Okimoto

From: Ben Fouts / President CEO
Mauna Loa Helicopters

Subject: Measure S.B. 2649 S.D. 1
Hearing Date: 13 March 2020
Time: 10:15AM
Location: Conference Room 423, State Capitol, 415 South Beretania Street

Bill Description: Amends section 261-12 to require tour aircraft operations permit applicants to have aircraft that are outfitted with FAA approved safety devices. Prohibits tour aircraft permit holders from allowing the noise footprint of their aircraft to enter any occupied property. Requires denial of permit or rescission of permit if requirements are not met. (SD1)

Mauna Loa Helicopters Position: OPPOSE

Aloha Chair Aquino, Vice Chair Hashimoto, and Representatives,

Mauna Loa Helicopters **OPPOSES** S.B. 2649 S.D.1.

The State of Hawai'i Legislature has entered amendments that would restrict the helicopter industry and handcuff them into extinction. No appropriate studies were made to the claims that were given. No individual who has expertise in the area was sought after. The legislature's main focus should be to learn more about the industry and how laws can crucially impact the economy, jobs, and tourism.

Specifically the proposed legislation would amend H.R.S. 261-12 to read:

"All tour aircraft permit holders shall be prohibited from allowing the noise footprint of their tour aircraft to enter any occupied property."

The vagueness to this interpretation threatens a diversified market in the tourism industry, with many different vendors providing exclusive services that are unique and are contributing members of our local communities, especially for those supplying jobs for working families. This amendment will take away the numerous vendors that assist the air-tour industry across the state who have businesses that look forward to different revenue sources to remain afloat during crucial and unknown times in the tourism industry.

Further, the legislature points to "safety" systems that place aircraft flotation devices and automatic dependent surveillance-broadcast devices in addition to an already regulated industry. The Federal Aviation Administration has full authority in the say of aircraft and equipment, but the legislature adds:

"No permit shall be authorized unless the tour aircraft is fitted with a flotation device and an automatic dependent surveillance-broadcast device which have been approved by the United States Federal Aviation Administration."

Mauna Loa Helicopters **OPPOSES** the mandate for aircraft flotation devices. Current regulations only require floats under some circumstances. Federal Aviation Administration. 14 CFR Part 136 "Commercial Air Tours" allow non-flotation aircraft to fly within the area and/or in-reach of the shoreline. However, aircraft flotation devices for over-water operations is a requirement under 14 CFR Part 136.11 (Federal Aviation Regulations / Aeronautical Information Manual) which reads:

CFR Part 136.11 Helicopter floats for over water.

(a) A helicopter used in commercial air tours over water beyond the shoreline must be equipped with fixed floats or an inflatable flotation system adequate to accomplish a safe emergency ditching, if -

- (1) It is a single-engine helicopter; or
- (2) It is a multi-engine helicopter that cannot be operated with the critical engine inoperative at a weight that will allow it to climb, at least 50 feet a minute, at an altitude of 1,000 feet above the

surface, as provided in the Rotorcraft Flight Manual (RFM).

(b) Each helicopter that is required to be equipped with an inflatable flotation system must have:

(1) The activation switch for the flotation system on one of the primary flight controls, and

(2) The flotation system armed when the helicopter is over water and is flying at a speed that does not exceed the maximum speed prescribed in the Rotorcraft Flight Manual for flying with the flotation system armed.

(c) Fixed floats or an inflatable flotation system is not required for a helicopter under this section if:

(1) The helicopter is over water only during the takeoff or landing portion of the flight, or

(2) The helicopter is operated within power-off gliding distance to the shoreline for the duration of the flight and each occupant is wearing a life preserver from before takeoff until the aircraft is no longer over water.

(d) Air tour operators required to comply with paragraphs (a) and/or (b) of this section must meet these requirements on or before September 5, 2008.

Requiring all operators to have flotation devices will impede the safety of some flights by limiting the choices pilots can have due to fuel loading. Additionally, the offshore waters of Hawai'i do not provide a safe "landing" area under most conditions for aircraft with emergency flotation equipment. Flotation devices provide some additional degree of safety should an engine failure occur beyond gliding distance of land, but "landing" in water was shown to have fatal consequences in the case of the New York accident.

Further, the second request requiring an automatic dependent surveillance-broadcast device which hereafter be known as 'ADS-B' is mandated by the Federal Aviation Administration under 14 CFR Part 91.225 Automatic Dependent Surveillance-Broadcast (ADS-B) Out equipment and use (FAR/AIM). ADS-B out is required in airspace A, B, C, with Airspace E requiring at or higher than 10,000 feet MSL, and at or below 2,500 feet AGL. Airspaces that currently are in Hawai'i are Class B, C, D, and E. Mauna Loa Helicopters has equipped its fleet with ADS-B out technology. However, requiring ADS-B out technology for all aircraft on all islands will not necessarily increase safety standards and will cause economic hardship on operators to comply with immediately. The Federal Aviation Administration standards and regulations for tour operations did take this into account and accordingly did not require the installation of ADS-B out in the entire State.

The concern also stems from the fact that the Federal Aviation Administration is the sole governing agency, federal government regulations and policy preempts state law, as the Federal Aviation Administration has full authority of airspace:

- 49 U.S.C. 40103 (a) (1) - The Federal Government, the Director of Transportation, and administrator of the Federal Aviation Administration has full authority of airspace.

"The United States Government has exclusive sovereignty of airspace of the United States."

- Federal law preempts the proposed measure. Article VI, Section 2 of the U.S. Constitution Supremacy clause:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Further, S.D.1 would add:

"Failure to comply with the above requirements shall result in a denial of a permit or rescission of a permit."

The unfortunate reality of this bill if it were to pass is the unknown changes to the air-tour companies. The technology requested in this bill would drastically implement hardships for the industry, to redo a business model excluding vendors who are eager to work and receive an income, to force companies to pay for unnecessary equipment, without any compensation from the state, and giving the 1,000+ working families at risk of losing a job. A harsh reality and blow to the state's local and future economy.

Respectfully submitted,

Ben Fouts
CEO / President
Mauna Loa Helicopters



Paradise Helicopters
P.O. Box 5371
Kailua-Kona, HI 96745

11 March 2020

To: Committee on Transportation
Representative Henry J.C. Aquino, Chair
Representative Troy N. Hashimoto, Vice Chair
Representative Tom Brower
Representative Ty J.K. Cullen
Representative Mark J. Hashem
Representative Scot Z. Matayoshi
Representative Justin H. Woodson
Representative Val Okimoto

From: Calvin Dorn, CEO
Paradise Helicopters

Subject: Measure S.B. 2649 S.D. 1
Hearing Date: 13 March 2020
Time: 10:15AM
Location: Conference Room 423, State Capitol, 415 South Beretania Street

Bill Description: Amends section 261-12 to require tour aircraft operations permit applicants to have aircraft that are outfitted with FAA approved safety devices. Prohibits tour aircraft permit holders from allowing the noise footprint of their aircraft to enter any occupied property. Requires denial of permit or rescission of permit if requirements are not met. (SD1)

Paradise Helicopters Position: **OPPOSE**

Aloha Chair Aquino, Vice Chair Hashimoto, and Representatives,

Paradise Helicopters **OPPOSES** S.B. 2649 S.D.1.

The State of Hawai'i Legislature has entered amendments that would restrict the helicopter industry and handcuff them into extinction. No appropriate studies were made to the claims that were given. No individual who has expertise in the area was sought after. The legislature's main focus should be to learn more about the industry and how laws can crucially impact the economy, jobs, and tourism.

Specifically, the proposed legislation would amend H.R.S. 261-12 to read:

"All tour aircraft permit holders shall be prohibited from allowing the noise footprint of their tour aircraft to enter any occupied property."

The vagueness to this interpretation threatens a diversified market in the tourism industry, with many different vendors providing exclusive services that are unique and are contributing members of our local communities, especially for those supplying jobs for working families. This amendment will take away the numerous vendors that assist the air-tour industry across the state who have businesses that look forward to different revenue sources to remain afloat during crucial and unknown times in the tourism industry.

Further, the legislature points to "safety" systems that place aircraft flotation devices and automatic dependent surveillance-broadcast devices in addition to an already regulated industry. The Federal Aviation Administration has full authority in the say of aircraft and equipment, but the legislature adds:

"No permit shall be authorized unless the tour aircraft is fitted with a flotation device and an automatic dependent surveillance-broadcast device which have been approved by the United States Federal Aviation Administration."

Paradise Helicopters **OPPOSES** the mandate for aircraft flotation devices. Current regulations only require floats under some circumstances. Federal Aviation Administration. 14 CFR Part 136 "Commercial Air Tours" allow non-flotation aircraft to fly within the area and/or in-reach of the shoreline. However, aircraft flotation devices for over-water operations is a requirement under 14 CFR Part 136.11 (Federal Aviation Regulations / Aeronautical Information Manual) which reads:

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(a) A helicopter used in commercial air tours over water beyond the shoreline must be equipped with fixed floats or an inflatable flotation system adequate to accomplish a safe emergency ditching, if -

- (1) It is a single-engine helicopter; or
- (2) It is a multi-engine helicopter that cannot be operated with the critical engine inoperative at a weight that will allow it to climb, at least 50 feet a minute, at an altitude of 1,000 feet above the surface, as provided in the Rotorcraft Flight Manual (RFM) .

- (b) Each helicopter that is required to be equipped with an inflatable flotation system must have:
- (1) The activation switch for the flotation system on one of the primary flight controls, and
 - (2) The flotation system armed when the helicopter is over water and is flying at a speed that does not exceed the maximum speed prescribed in the Rotorcraft Flight Manual for flying with the flotation system armed.
- (c) Fixed floats or an inflatable flotation system is not required for a helicopter under this section if:
- (1) The helicopter is over water only during the takeoff or landing portion of the flight, or
 - (2) The helicopter is operated within power-off gliding distance to the shoreline for the duration of the flight and each occupant is wearing a life preserver from before takeoff until the aircraft is no longer over water.
- (d) Air tour operators required to comply with paragraphs (a) and/or (b) of this section must meet these requirements on or before September 5, 2008.

Requiring all operators to have flotation devices will impede the safety of some flights by limiting the choices pilots can have due to fuel loading. Additionally, the offshore waters of Hawai'i do not provide a safe "landing" area under most conditions for aircraft with emergency flotation equipment. Flotation devices provide some additional degree of safety should an engine failure occur beyond gliding distance of land, but "landing" in water was shown to have fatal consequences in the case of the New York accident.

Further, the second request requiring an automatic dependent surveillance-broadcast device which hereafter be known as 'ADS-B' is mandated by the Federal Aviation Administration under 14 CFR Part 91.225 Automatic Dependent Surveillance-Broadcast (ADS-B) Out equipment and use (FAR/AIM). ADS-B out is required in airspace A, B, C, with Airspace E requiring at or higher than 10,000 feet MSL, and at or below 2,500 feet AGL. Airspaces that currently are in Hawai'i are Class B, C, D, and E. Paradise Helicopters has equipped its fleet with ADS-B out technology. However, requiring ADS-B out technology for all aircraft on all islands will not necessarily increase safety standards and will cause economic hardship on operators to comply with immediately. The Federal Aviation Administration standards and regulations for tour operations did take this into account and accordingly did not require the installation of ADS-B out in the entire State.

The concern also stems from the fact that the Federal Aviation Administration is the sole governing agency, federal government regulations and policy preempts state law, as the Federal Aviation Administration has full authority of airspace:

- 49 U.S.C. 40103 (a) (1) - The Federal Government, the Director of Transportation, and administrator of the Federal Aviation Administration has full authority of airspace.
"The United States Government has exclusive sovereignty of airspace of the United States."

- Federal law preempts the proposed measure. Article VI, Section 2 of the U.S. Constitution Supremacy clause:
"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Further, S.D.1 would add:

"Failure to comply with the above requirements shall result in a denial of a permit or rescission of a permit."

The unfortunate reality of this bill if it were to pass is the unknown changes to the air-tour companies. The technology requested in this bill would drastically implement hardships for the industry for all operators to comply in a short time frame. Companies would be forced to develop a new business models to cover the additional costs in a poor economy further exasperating the overall revenues generated in the State. It would also excluding vendors who are eager to provide services to our guests which would reduce expenditures and income for employees and companies while also forcing companies to pay for unnecessary equipment. These financial burdens come without any compensation from the state and would affect an industry that directly employs 1,000+ working families. This is a harsh reality and blow to the state's local and future economy based on an emotional appeal by a special interest that has not provided any measurable evidence to prove its claims.

Respectfully submitted,

Calvin Dorn
CEO
Paradise Helicopters

SB-2649-SD-1

Submitted on: 3/11/2020 3:22:06 PM

Testimony for TRN on 3/13/2020 10:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Dan Brown	Individual	Support	Yes

Comments:

SB-2649-SD-1

Submitted on: 3/12/2020 8:37:12 AM

Testimony for TRN on 3/13/2020 10:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Daniel Heath	Individual	Oppose	No

Comments:

12 March 2020

To: Committee on Transportation

Representative Henry J.C. Aquino, Chair

Representative Troy N. Hashimoto, Vice Chair

Representative Tom Brower

Representative Ty J.K. Cullen

Representative Mark J. Hashem

Representative Scot Z. Matayoshi

Representative Justin H. Woodson

Representative Val Okimoto

From: Dan HeathMauna Loa Helicopters

Subject: Measure S.B. 2649 S.D. 1

Hearing Date: 13 March 2020

Time: 10:15AM

Location: Conference Room 423, State Capitol, 415 South Beretania Street

Bill Description: Amends section 261-12 to require tour aircraft operations permit applicants to have aircraft that are outfitted with FAA approved safety devices. Prohibits tour aircraft permit holders from allowing the noise footprint of their aircraft to enter any occupied property. Requires denial of permit or rescission of permit if requirements are not met. (SD1)

Dan Heath Position: OPPOSE

Aloha Chair Aquino, Vice Chair Hashimoto, and Representatives,

Dan Heath **OPPOSES** S.B. 2649 S.D.1.

The State of Hawai'i Legislature has entered amendments that would restrict the helicopter industry and handcuff them into extinction. No appropriate studies were made to the claims that were given. No individual who has expertise in the area was sought after. The legislature's main focus should be to learn more about the industry and how laws can crucially impact the economy, jobs, and tourism.

Specifically the proposed legislation would amend H.R.S. 261-12 to read:

“All tour aircraft permit holders shall be prohibited from allowing the noise footprint of their tour aircraft to enter any occupied property.”

The vagueness to this interpretation threatens a diversified market in the tourism industry, with many different vendors providing exclusive services that are unique and are contributing members of our local communities, especially for those supplying jobs for working families. This amendment will take away the numerous vendors that assist the air-tour industry across the state who have businesses that look forward to different revenue sources to remain afloat during crucial and unknown times in the tourism industry.

Further, the legislature points to “safety” systems that place aircraft flotation devices and automatic dependent surveillance-broadcast devices in addition to an already regulated industry. The Federal Aviation Administration has full authority in the say of aircraft and equipment, but the legislature adds:

“No permit shall be authorized unless the tour aircraft is fitted with a flotation device and an automatic dependent surveillance-broadcast device which have been approved by the United States Federal Aviation Administration.”

Mauna Loa Helicopters **OPPOSES** the mandate for aircraft flotation devices. Current regulations only require floats under some circumstances. Federal Aviation Administration. 14 CFR Part 136 “Commercial Air Tours” allow non-flotation aircraft to fly within the area and/or in-reach of the shoreline. However, aircraft flotation devices for over-water operations is a requirement under 14 CFR Part 136.11 (Federal Aviation Regulations / Aeronautical Information Manual) which reads:

CFR Part 136.11 Helicopter floats for over water.

(a) A helicopter used in commercial air tours over water beyond the shoreline must be equipped with fixed floats or an inflatable flotation system adequate to accomplish a safe emergency ditching, if -

(1) It is a single-engine helicopter; or

(2) It is a multi-engine helicopter that cannot be operated with the critical engine inoperative at a weight that will allow it to climb, at least 50 feet a minute, at an altitude of 1,000 feet above the surface, as provided in the Rotorcraft Flight Manual (RFM).

(b) Each helicopter that is required to be equipped with an inflatable flotation system must have:

(1) The activation switch for the flotation system on one of the primary flight controls, and

(2) The flotation system armed when the helicopter is over water and is flying at a speed that does not exceed the maximum speed prescribed in the Rotorcraft Flight Manual for flying with the flotation system armed.

(c) Fixed floats or an inflatable flotation system is not required for a helicopter under this section if:

(1) The helicopter is over water only during the takeoff or landing portion of the flight, or

(2) The helicopter is operated within power-off gliding distance to the shoreline for the duration of the flight and each occupant is wearing a life preserver from before takeoff until the aircraft is no longer over water.

(d) Air tour operators required to comply with paragraphs (a) and/or (b) of this section must meet these requirements on or before September 5, 2008.

Requiring all operators to have flotation devices will impede the safety of some flights by limiting the choices pilots can have due to fuel loading. Additionally, the offshore waters of Hawai'i do not provide a safe "landing" area under most conditions for aircraft with emergency flotation equipment. Flotation devices provide some additional degree of safety should an engine failure occur beyond gliding distance of land, but "landing" in water was shown to have fatal consequences in the case of the New York accident.

Further, the second request requiring an automatic dependent surveillance-broadcast device which hereafter be known as 'ADS-B' is mandated by the Federal Aviation Administration under 14 CFR Part 91.225 Automatic Dependent Surveillance-Broadcast (ADS-B) Out equipment and use (FAR/AIM). ADS-B out is required in airspace A, B, C, with Airspace E requiring at or higher than 10,000 feet MSL, and at or below 2,500 feet AGL. Airspaces that currently are in Hawai'i are Class B, C, D, and E. Mauna Loa Helicopters has equipped its fleet with ADS-B out technology. However, requiring ADS-B out technology for all aircraft on all islands will not necessarily increase safety standards and will cause economic hardship on operators to comply with immediately. The Federal Aviation Administration standards and regulations for tour operations did take this into account and accordingly did not require the installation of ADS-B out in the entire State.

The concern also stems from the fact that the Federal Aviation Administration is the sole governing agency, federal government regulations and policy preempts state law, as the Federal Aviation Administration has full authority of airspace:

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Further, S.D.1 would add:

“Failure to comply with the above requirements shall result in a denial of a permit or rescission of a permit.”

The unfortunate reality of this bill if it were to pass is the unknown changes to the air-tour companies. The technology requested in this bill would drastically implement hardships for the industry, to redo a business model excluding vendors who are eager to work and receive an income, to force companies to pay for unnecessary equipment, without any compensation from the state, and giving the 1,000+ working families at risk of losing a job. A harsh reality and blow to the state's local and future economy.

Respectfully submitted,

Dan Heath

SB-2649-SD-1

Submitted on: 3/12/2020 12:23:12 PM

Testimony for TRN on 3/13/2020 10:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Bronsten Kossow	Individual	Oppose	Yes

Comments:

That moment when the State says "We need to encourage business in the State" and recognize people leaving the state because of jobs, instead they institute horrible bills to kill jobs and kill the economy. Mahalo for that.